

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

OWENS CORNING SALES, LLC ,)	
and OWENS CORNING MINERAL)	
WOOL, LLC,)	
)	
Plaintiffs,)	Case No. 6:18-cv-3038-MDH
)	
v.)	
)	JURY TRIAL DEMANDED
AREA IMPIANTI S.p.A.,)	
)	
Defendant.)	

**DEFENDANT AREA IMPIANTI S.p.A.’S MOTION FOR LEAVE TO FILE FIRST
AMENDED ANSWER AND THIRD AMENDED COUNTERCLAIM**

Pursuant to Rule 15, Defendant Area Impianti S.p.A. (“Area Impianti”) respectfully moves the Court for its order granting Defendant leave to file its First Amended Answer and Third Amended Counterclaim. Defendant submits the following in support of its Motion for Leave to File its First Amended Answer and Third Amended Counterclaim:

1. This case arises out of Area Impianti’s design and manufacture of air pollution control equipment for the Owens Corning mineral fiber insulation manufacturing plant in Joplin, Missouri (in reliance on specifications provided by Owens Corning Sales, LLC (“OC”)), and OC’s failure to provide accurate specifications relating to the expected emissions from the plant’s cupola furnace. It is now evident, based on recent disclosures by Plaintiffs, that Plaintiffs (despite repeated requests from Area Impianti) withheld critical emissions information from Area Impianti after the startup of the plant in May 2017 (information just recently produced by Plaintiffs showing actual emissions exceed and/or deviate from the specifications relied on by Area Impianti). Moreover, while purposefully withholding this critical information, Owens Corning Sales, LLC

proceeded with the wrongful termination and breach of its contract with Area Impianti, the withholding of more than €1.2 million owed to Area Impianti for equipment and other services provided, the wrongful execution of performance/bank guarantees in the approximate amount of €1.8 million, resulting in damages to Area Impianti in excess of €4.2 million, and the filing of this lawsuit against Area Impianti.

2. Defendant Area Impianti respectfully seeks leave to amend its answer and counterclaims against Plaintiffs based, in part, on the emission testing results/information (previously withheld but just recently produced by Plaintiffs) indicating the emissions from the cupola furnace exceed and/or deviate from the specifications provided by Owens Corning Sales, LLC, upon which Area Impianti relied in designing and supplying the air pollution control system at issue in this litigation. Additionally, in relation with Defendant's response (Doc. 33) to Plaintiffs' Motion to Dismiss (Doc. 25), Defendant seeks to amend and supplement the allegations concerning the tortious interference claim against Plaintiff Owens Corning Mineral Wool, LLC. Defendant also seeks to add claims for misrepresentation and civil conspiracy.

3. Defendant's proposed First Amended Answer and Third Amended Counterclaim is attached hereto as Exhibit 1 and incorporated herein by this reference.

4. Rule 15 provides that "the court should freely give leave when justice so requires."

5. The granting of this timely motion would serve the interests of justice and would not unduly prejudice the parties in this case.

WHEREFORE, Defendant Area Impianti respectfully requests leave from the Court to file the proposed amended answer and counterclaim attached hereto as Exhibit 1, and for such other and further relief as the Court deems just and proper.

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CERTIFICATE OF SERVICE

Undersigned counsel certifies that this original document was signed by the preparing attorney and will be maintained by the filer for a period not less than the maximum allowable time to complete the appellate process.

The undersigned hereby certifies that a signed copy of the above document was sent this 15th day of August, 2018, via () U.S. Mail, postage prepaid, () facsimile, (X) electronic transmission, () e-mail, and or () hand delivery, to:

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